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16 Attorneys for Defendants
 17 City of Novato, et al.

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MARIN COUNTY HOMELESS
 21 UNION, a local affiliate of the
 22 CALIFORNIA HOMELESSNESS
 23 UNION, on behalf of itself and those it
 24 represents; CAMP COMPASSION, a
 25 Homeless Union-affiliated encampment
 26 in Lee Gerner Park; Individual Plaintiffs
 27 JASON SARRIS; LEA DEANGELO;
 28 ZACH BOULWARE; CARRIE
 HEALON, LISA NICOLE JOHNSON;
 DONALD HOBBS; DEBORAH ANN
 MIROMONTES; LISA JOHNSON;
 CHARLES TALBOT; BETHANY
 ALLEN; MICHELANGELO MONTEZ;
 DEBORAH ANN MIRAMONTES;
 KALANI WELSCH, and other similarly
 situated homeless persons including
 current residents of Camp Compassion
 homeless encampment,

29 Plaintiffs,

30 v.

31 CITY OF NOVATO; CITY MANAGER
 32 ADAM MCGILL, MAYOR PAT
 33 EKLUND, MAYOR PRO TEM ERIC
 34 LUCAN, CHIEF OF POLICE
 35 MATHEW MCCAFFREY, PUBLIC
 36 WORKS DIRECTOR CHRIS BLUNK,

37 Defendants.

38 **CASE NO.: 4:21-cv-05401-YGR**

39 [Assigned to the Hon. Yvonne Gonzalez
 40 Rogers]

41 **JOINT CASE MANAGEMENT
 42 STATEMENT PURSUANT TO CIVIL
 43 LOCAL RULE 16-9**

44 CMC Date: February 28, 2022
 45 Time: 2:00 pm
 46 Ctrm: 1

Pursuant to Civil Local Rule 16-9, Plaintiffs MARIN COUNTY HOMELESS UNION, a local affiliate of the CALIFORNIA HOMELESSNESS UNION, on behalf of itself and those it represents; CAMP COMPASSION, a Homeless Union-affiliated encampment in Lee Gerner Park; Individual Plaintiffs JASON SARRIS; LEA DEANGELO; ZACH BOULWARE; CARRIE HEALON, LISA NICOLE JOHNSON; DONALD HOBBS; DEBORAH ANN MIROMONTES; LISA JOHNSON; CHARLES TALBOT; BETHANY ALLEN; MICHELANGELO MONTEZ; DEBORAH ANN MIRAMONTES; KALANI WELSCH (together, “Plaintiffs”) and Defendants CITY OF NOVATO; CITY MANAGER ADAM MCGILL, MAYOR PAT EKLUND, MAYOR PRO TEM ERIC LUCAN, CHIEF OF POLICE MATHEW MCCAFFREY, PUBLIC WORKS DIRECTOR CHRIS BLUNK (together, “City”) submit this Joint Case Management Statement.

I. JURISDICTION AND SERVICE

The Complaint alleges jurisdiction under 28 U.S.C. § 1331 and 1343. There are no issues regarding personal jurisdiction or venue. All parties have been served.

II. FACTS

Lee Gerner Park in the City of Novato runs along the creek to the rear of the Novato Library. Lee Gerner Park is the site of a homeless encampment.

In June 2021, the City Council of the City of Novato adopted Ordinances 1669 and 1670 (the “Ordinances”), both of which amend the Novato Municipal Code with respect to camping on public property. Ordinance 1669 added section 14-20.5 to the Novato Municipal Code to generally prohibit open flames in any public space. It also added section 7-11 to address particular fire risks associated with homeless encampments. At issue here, newly added Novato Municipal Code section 7-11.3(a)(5) prohibits camping in designated wildfire risk areas. Section 7-11.3(a)(1) prohibits camping at or within 50 feet of facilities that have been designated as critical infrastructure by the City Council. The City Council declared by resolution that the following real property and facilities were critical infrastructure:

1. Government buildings, including City Hall, schools, fire stations,
2 police stations, jails, court houses, and libraries.
3. Electric, sewer, wastewater and water utility facilities, including
4 generation stations, transformers and substations.
5. Health facilities, as that term is defined in Health & Safety Code
6 section 1250
7. Train stations and train tracks
8. Water sources and levees
9. Bridges and roads designated by the City as Citywide evacuation
10 routes.

11 The Ordinance also authorizes the City Council to designate other facilities,
12 buildings and areas to be critical infrastructure and includes as examples of such
13 additional infrastructure electrical wires, natural gas pipes and water sources among
14 others which Plaintiffs maintain could conceivably render the entire city off limits to
15 camping.

16 Ordinance 1670 introduced additional regulations within the existing Stream
17 Protection Zone making it unlawful to camp in that Zone, among other restrictions.

18 The principal factual disputes between the parties relate to the existence of
19 “adequate temporary shelter” under *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir.
20 2018). The City contends that it has ensured adequate temporary shelter by entering into
21 an MOU with Homeward Bound of Marin County, a non-profit organization that
22 operate the New Beginnings Center in the City, and the Kerner shelter in the City of
23 San Rafael. Plaintiffs dispute that the Homeward Bound facilities provide adequate
24 temporary shelter.

25 Plaintiffs maintain that because the Ordinances make no provision for
26 constitutionally compliant, accessible, alternative indoor accommodations as required
27 under *Martin v. Boise*, the Ordinance violates the Ninth Circuit decision and are facially
28 unconstitutional as designed or having the effect of targeting the unhoused, ambiguous,

1 vague and overbroad.

2 Plaintiffs also dispute that the City has provided adequate temporary shelter by
 3 way of its MOU with Homeward Bound. As set forth in detail in numerous declarations
 4 in its various pleadings, conditions at both Kerner Street and the New Beginnings
 5 Center include unsafe and unsanitary facilities and practices, infestations of bedbugs
 6 and, more recently, an outbreak of COVID during which persons who tested positive
 7 were roomed with others who were not COVID positive. Unacceptable conditions also
 8 include abusive staff, dangers posed to and by certain residents by way of Homeward
 9 Bound's failure to provide mental health services; compulsory payment of fees and
 10 performance of manual labor, including labor performed by elderly residents with
 11 disabilities; delays of and refusals to provide reasonable accommodations to those with
 12 disabilities, and unreasonable rules restricting first amendment rights including privacy,
 13 unjustified and unannounced searches of personal items, violations of freedom of
 14 association and the lack of any meaningful opportunity to contest sanctions or appeal
 15 disciplinary decisions that adversely impact residents who have been made to sign
 16 contracts of adhesion surrendering basic rights.

17 **III. LEGAL ISSUES**

18 This case presents primarily legal issues. First, the parties dispute whether the
 19 Ordinances are narrowly tailored to only prohibit camping at particular times or in
 20 particular locations. The City contends that the Ordinances are reasonable time, place
 21 and manner restrictions designed to address legitimate safety concerns. Plaintiffs allege
 22 the Ordinances amount to a City-wide ban on camping that violates the Constitution.

23 Second, the parties dispute the extent of the City's obligation to ensure adequate
 24 temporary shelter when enforcing camping restrictions. The City contends it may
 25 enforce the Ordinances if it can offer the person against whom the Ordinances would
 26 be enforced adequate temporary shelter. Plaintiffs allege *Martin v. City of Boise* requires
 27 the City to have sufficient shelter space to accommodate all known homeless persons
 28 within a jurisdiction before the Ordinances can be enforced.

1 Third, the parties dispute whether enforcing the Ordinances and dispersing
 2 encampments constitutes a “state created danger” now that COVID-19 vaccines are
 3 widely available. The City contends that, now that Marin County has reached a 90%
 4 vaccination rate, the CDC’s guidance against dispersing encampments is no longer
 5 applicable within Marin County. Plaintiffs allege that the City must comply with the
 6 CDC guidance until it is officially withdrawn or rescinded. Pursuant to the terms of the
 7 stipulated Preliminary Injunction, the parties have agreed that the injunction will remain
 8 in effect until the CDC withdraws, rescinds, or otherwise modifies its Interim Guidance
 9 on People Experiencing Homelessness to remove the recommendation against clearing
 10 encampments, the Parties agree to terms of settlement of this litigation, or the
 11 Preliminary Injunction is dissolved or modified by this Court. Dkt. No. 54.

12 Plaintiffs assert that the current CDC guidelines against breaking up homeless
 13 encampments remain in effect and unchanged since first promulgated in March, 2020.

14 **IV. MOTIONS**

15 **Prior Motions:** Plaintiffs moved for a temporary restraining order and order to
 16 show cause re: preliminary injunction on July 15, 2021. Dkt. No. 3. The Court granted
 17 the temporary restraining order on July 15, 2021. Dkt. No. 8. The parties stipulated to
 18 the terms of a preliminary injunction on October 15, 2021, and the Court signed the
 19 stipulated preliminary injunction order on October 18, 2021. Dkt. No. 54.

20 **Pending Motions:** None.

21 **Anticipated Motions:** Plaintiffs and the City each anticipate the possibility of
 22 filing various pretrial motions including motions for summary judgment to resolve
 23 some or all of the legal issues present in this case.

24 **V. AMENDMENT OF PLEADINGS**

25 **Plaintiffs:** Plaintiffs anticipate that they will seek leave to amend their pleadings
 26 to address the failure of the City to make expenditures and to seek funding available
 27 from county, state and federal sources to provide durable permanent housing to which
 28 Plaintiffs may already be entitled under federal Housing and Urban Development

1 regulations and other local and state mandates. Plaintiffs also anticipate challenges to
 2 other existing ordinances, customs, policies and practices that either by design or effect
 3 disproportionately impact and criminalize homeless persons in the City of Novato.

4 **Defendants:** The City does not anticipate any amendment of the pleadings at this
 5 time.

6 **VI. EVIDENCE PRESERVATION**

7 The parties have reviewed the Guidelines Relating to the Discovery of
 8 Electronically Stored Information. The parties have met and conferred pursuant to Fed.
 9 R. Civ. Proc. 26(f) and discussed reasonable and proportionate steps to preserve
 10 evidence relevant to the issues in this action.

11 **VII. DISCLOSURES**

12 The parties have not made any initial disclosures. The parties will exchange their
 13 initial disclosures on or before March 14, 2022.

14 **VIII. DISCOVERY**

15 **Discovery Taken to Date:** None.

16 **Scope of Anticipated Discovery:**

17 **Plaintiffs:** Plaintiffs anticipate that they will serve written discovery and
 18 take the depositions of all named Defendants as well as the City's person or persons
 19 most knowledgeable in systems, facilities, physical locations and other areas identified
 20 by the City as potentially constituting "critical infrastructure" and the depositions of
 21 City officials including, but not limited to members of City Council, department heads
 22 in the areas of community development, law enforcement, city management and
 23 housing.

24 **Defendants:** The City anticipates it will be required to take the depositions
 25 of the 11 named plaintiffs and the persons most knowledgeable from the Marin County
 26 Homeless Union regarding the nature of the union, its members, and issues related to
 27 the allegations made in Plaintiffs' complaint. Otherwise, discovery is likely to be limited
 28 to basic interrogatories, requests for admissions, and requests for production of

1 documents related to the factual allegations of the complaint, as well as expert
 2 discovery, as the issues related to the Ordinances are primarily legal.

3 **Proposed Limitations or Modifications of the Discovery Rules:** Neither party
 4 has proposed any limitations or modifications of the discovery rules.

5 **Stipulated E-Discovery Order:** The Parties have not discussed a stipulated e-
 6 discovery order.

7 **Proposed Discovery Plan:** The Parties have agreed that discovery will proceed
 8 according to the Federal Rules.

9 **Any Identified Discovery Disputes:** The Parties have not identified any
 10 discovery disputes.

11 **IX. CLASS ACTIONS**

12 **Plaintiffs:** Plaintiffs may seek leave to amend to assert a class action and to seek
 13 class certification. The number of persons who are impacted by the challenged City
 14 wide camping bans is far greater than the relatively small number of persons in the
 15 temporary sanctioned encampment at Lee Gerner Park while, at the same time, the
 16 individual named plaintiffs are qualified to serve as representatives of a putative class
 17 which share the same characteristics arising from a common core of operative facts.
 18 Moreover, insofar as the camping ban would apply to persons from outside the City of
 19 Novato, the challenged ordinances constitute a restriction on travel to and within the
 20 City of Novato that may impact an even broader class of persons.

21 **Defendants:** The Complaint does not meet even the very minimal pleading
 22 standard under the Rules to maintain a class action, as it does not contain a statement of
 23 basic facts to indicate that the requirements of Federal Rules of Civil Procedure, Rule
 24 23 have been satisfied. *Gillibeau v. City of Richmond*, 417 F.2d 426, 432 (9th Cir. 1969).
 25 Plaintiffs' speculation they may amend their complaint does not allow the Court to issue
 26 an appropriate scheduling order based on the current complaint. It is the Defendants'
 27 position, therefore, that because this lawsuit is not a class action as pled; therefore, there
 28 is no need for class certification procedures.

1 **X. RELATED CASES**

2 **Plaintiffs:** Although it might be a close call, and there has been no consideration
 3 or finding thus far that the two cases are related, Plaintiff Marin County Homeless
 4 Union also represents homeless campers in the case of *Sausalito/Marin County*
 5 *Homeless Union v. City of Sausalito*, No. 3:21 cv 01143 EMC. Although two different
 6 cities are the principal defendants in the respective cases, the issues are similar and the
 7 same Magistrate Judge Robert Illman, has been assigned to address day to day issues as
 8 well as attempt informal resolution of the underlying cases, respectively.

9 **Defendants:** The City is not aware of any related cases, and disputes that the
 10 facts and circumstances in the Sausalito case mentioned by Plaintiffs above bears any
 11 relation to this matter.

12 **XI. RELIEF**

13 The Complaint seeks injunctive relief enjoining Defendants from enforcing
 14 Novato Municipal Code section 7-11, 7-12, 14-20.5, 15-20.7, and all other sections of
 15 the Novato Municipal Code that are found to violate *Martin v. City of Boise*. The
 16 Complaint also seeks attorneys' fees for Plaintiffs' counsel.

17 **XII. SETTLEMENT AND ADR**

18 This case has been assigned to Magistrate Judge Robert Illman for settlement
 19 discussions. The parties have met several times with Judge Illman, and successfully
 20 negotiated the stipulated preliminary injunction with Judge Illman's assistance. Judge
 21 Illman continues to oversee disputes between the parties related to the stipulated
 22 preliminary injunction.

23 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

24 The City does not consent to have a magistrate judge conduct all further
 25 proceedings including trial and entry of judgment. Plaintiffs would not necessarily be
 26 averse to Judge Illman serving as trial court judge, should Defendants agree. Whether
 27 or not Judge Illman's service thus far as the assigned Magistrate Judge is an issue, Judge
 28 Illman has become very familiar with the legal and factual issues in the case and by

1 both sides, regarded as very helpful in interpreting and resolving issues relating to this
 2 Court's preliminary injunction order.

3 **XIV. OTHER REFERENCES**

4 At this time, the Parties do not believe this case is suitable for reference to binding
 5 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

6 **XV. NARROWING OF ISSUES**

7 The City intends to file a motion for summary judgment to resolve the legal issues
 8 at the core of this case. This summary judgment motion will either resolve the case in
 9 its entirety or significantly narrow the issues at trial.

10 Plaintiffs may file a motion for summary judgment or summary adjudication if
 11 they determine such a motion is appropriate. However, Plaintiffs believe that the
 12 constitutionality of the challenged ordinances both on their face and as applied involve
 13 material facts in dispute, many of which have been disclosed in the litigation preceding
 14 the issuance of the preliminary injunction and in disputes, although generally resolved,
 15 that have arisen subsequently.

16 In conformity with this Court's standing order, if either party seeks to file a
 17 motion for summary judgment, that party will file a letter to request a pre-filing
 18 conference and state the grounds for the motion within 5 days of the close of all
 19 discovery.

20 If any issues remain for trial following resolution of the summary judgment
 21 motions, the Parties will meet and confer and agree on stipulated facts to expedite the
 22 presentation of evidence at trial.

23 **XVI. EXPEDITED TRIAL PROCEDURE**

24 The Parties do not believe that expedited trial procedures are appropriate for this
 25 case.

26 **XVII. SCHEDULING**

27 **Plaintiffs:** Plaintiffs are in agreement with Defendant's proposed schedule.
 28 However, as Counsel for Defendants is aware, Plaintiffs' counsel's wife is recovering

1 from a serious injury that required neurosurgery and will require a prolonged recovery
 2 period during which Counsel will need to provide constant care. Thus, the Court should
 3 be aware that circumstances may require modification of the schedule or parts thereof
 4 going forward.

5 **Defendants:** The City proposes the following dates:

- 6 • Non-Expert Discovery Cutoff: August 24, 2022
- 7 • Initial Expert Disclosure: September 7, 2022
- 8 • Rebuttal Expert Disclosure: October 7, 2022
- 9 • Expert Discovery Cutoff: October 21, 2022
- 10 • Hearing of dispositive motions: No later than December 21, 2022
- 11 • Pretrial Conference and Trial: The City proposes a trial date in March 2023
 12 and will be prepared to suggest a pre-trial conference date based on the
 13 trial date set and the Court's calendar.

14 **XVIII. TRIAL**

15 **Plaintiffs:** Plaintiffs demand a jury trial and anticipate that number of actual trial
 16 days would be between five and seven days. Plaintiffs believe there will have to be some
 17 discovery conducted until they can determine what facts may be stipulated.

18 **Defendants:** The City believes a court trial is most appropriate given the
 19 primarily legal nature of the issues presented. The City anticipates trial will last no
 20 longer than 3 days if Plaintiff will agree to use stipulated facts.

21 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR
 22 PERSONS**

23 **Plaintiffs:** Plaintiffs request that they be allowed to reserve their response
 24 pending further investigation and determination of who and what entities may have an
 25 interest in the case.

26 **Defendants:** None

27 **XX. PROFESSIONAL CONDUCT**

28 All attorneys of record have reviewed the Guidelines for Professional Conduct

1 for the Northern District of California.

2 | **XXI. OTHER MATTERS**

3 | **Plaintiffs:** See XVIII above re medical issue impacting Plaintiffs' counsel.

4 | **Defendants:** None

6 | DATED: February 18, 2022

LAW OFFICE OF ANTHONY D. PRINCE

/s/ Anthony D. Prince

ANTHONY PRINCE
General Counsel,
California Homeless Union
Attorney for Plaintiffs

13 DATED: February 18, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Carmen A. Brock

JEFFREY A. WALTER
CARMEN A. BROCK
LILIANE M. WYCKOFF
Attorney for Defendants
City of Novato, City Manager Adam
McGill, Mayor Pat Eklund, Mayor Pro
Tem Eric Lucan, Chief of Police Mathew
McCaffrey, Public Works Director Chris
Blunk

1 **CERTIFICATE OF SERVICE**

2 *Marin County Homeless Union v. City of Novato, et al.*

3 United States District Court, Northern District

4 Case No. 4:21-cv-05401-YGR

5 I, McCall L. Williams, declare:

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite
8 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On February 18,
9 2022, I served the document(s) described as **JOINT CASE MANAGEMENT STATEMENT**
10 **PURSUANT TO CIVIL LOCAL RULE 16-9** on the interested parties in this action as follows:

11 **BY ELECTRONIC TRANSMISSION:** I hereby certify that I electronically filed the
12 foregoing with the Clerk of the Court for the United States District Court, Northern District
13 by using the CM/ECF system on February 18, 2022. I certify that all participants in the case
14 are registered CM/ECF users and that service will be accomplished by the USDC, Northern
15 District CM/ECF system.

16 I declare that I am employed in the offices of a member of the State Bar of this Court at
17 whose direction the service was made. I declare under penalty of perjury under the laws of the
18 United States of America that the above is true and correct.

19 Executed on February 18, 2022, at Pasadena, California.

20 /s/McCall Williams

21 McCall L. Williams

22 **Colantuono, Highsmith & Whatley, PC**
23 790 E. Colorado Blvd., Suite 850
24 Pasadena, CA 91101